



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

May 6, 2013

Daniel F. Goldstein
Brown, Goldstein, & Levy
120 E. Baltimore Street, Suite 1700
Baltimore, MD 21202

Dear Mr. Goldstein:

I am writing in response to your April 10, 2013, letter concerning the accessibility of emerging technology for students with disabilities. In your letter, you noted an April 4, 2013, article by Marc Sherman, entitled “OCR: Schools Need Not Provide Same Technology to All Students,” which references a statement by the Department of Education’s Office for Civil Rights (OCR). That article also references WhisperCast, a program available from Amazon.com for the management of Kindle electronic book readers. While I am pleased to respond to your inquiry, I must caution that my office has not investigated schools’ use of WhisperCast, and neither this letter nor our earlier statement to Mr. Sherman should be read to constitute an advisory opinion regarding that particular technology.

As you know, OCR and the Department of Justice issued a joint “Dear Colleague” letter (DCL) on June 29, 2010, regarding the use of emerging technologies in compliance with civil rights laws that prohibit discrimination on the basis of disability (www.ed.gov/ocr/letters/colleague-20100629.pdf), and OCR issued a follow-up “Frequently Asked Questions” document (FAQ) on the same topic on May 26, 2011 (www.ed.gov/ocr/docs/dcl-ebook-faq-201105.html).

The June 2010 DCL explains that “[r]equiring the use of an emerging technology in a classroom environment when the technology is inaccessible to an entire population of individuals with disabilities—individuals with visual disabilities—is discrimination prohibited by the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the

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Rehabilitation Act of 1973 (Section 504) unless those individuals are provided accommodations or modifications that permit them to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner.” Under Section 504 and Title II of the ADA, qualified individuals with disabilities, including students with visual impairments, may not be subjected to discrimination by public schools; they must receive aids, benefits, or services that are as effective in affording equal opportunity to obtain the same results, to gain the same benefit, or to reach the same level of achievement as provided to others; and they must not be provided different or separate aids, benefits, or services than provided to others unless doing so is necessary to provide qualified individuals with disabilities with aids, benefits or services that are as effective as those provided to others. This is the standard that OCR uses in enforcing Title II and Section 504 in this area.

In your letter, you inquired about whether students with disabilities could receive all the educational benefits provided by a technology in an equally effective and equally integrated manner when the technology is inaccessible to students with disabilities and it “allows the teacher to provide instant access to new content only to those using the technology,” and offers features including “shared highlights, comments, and note-taking” that promote online “collaboration and digital communication among students and with the teacher.”

As OCR has explained in the FAQ document referenced above, in order to comply with federal civil rights laws, students with disabilities must receive *all* the educational benefits provided by the inaccessible technology in an equally effective and equally integrated manner. To meet this standard when the technology is inaccessible, students with disabilities must be afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services, with substantially equivalent ease of use, as sighted students through accommodations or modifications, and those benefits must be provided to students with disabilities in as timely a manner as those provided to students without disabilities.

In the hypothetical you offered, the educational benefits at issue would include the capacity for online collaboration and digital communication with the rest of the class and with the teacher, and the ability to receive new content from the teacher instantly. Unless accommodations or modifications were provided that would allow students with disabilities to engage in the same real-time online collaboration and digital

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communication with the rest of the class and the teacher as those students without disabilities who were provided the inaccessible technology, the school would be in violation of federal civil rights laws if they adopted that technology, assuming the facts in your hypothetical were complete and accurate.

Equal access for students with disabilities is the law. Schools should consider accessibility issues up front, when they are deciding whether to create or acquire emerging technology and when they are planning how the technology will be used.

I hope this information is of assistance. Thank you for all the work that you do for students and others with disabilities.

Sincerely,

//s//

Seth M. Galanter

Acting Assistant Secretary for Civil Rights
United States Department of Education